IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2993 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JINDAL TEXTILES MILLS PVT LTD

Versus

DOLATRAM OMKARLAL

Appearance:

MR JR NANAVATI for Petitioner

MR SURESH M SHAH for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 10/05/2000

CAV JUDGEMENT

Jindal Textile Mills Pvt. Ltd., the petitioner is a private limited company registered under the Indian Companies Act. The company is doing its business

activities at Narol, Ahmedabad, and it is running a processing house. The company is maintaining registers for its workers, including Muster Roll Workers. The respondent Dolatram Omkarmal claims that he is the workman under the company and he has been terminated from services on 10-6-1984 without complying the procedure under the law. The respondent sent a notice to the petitioner on 8-10-1984 under clause (4) of Section 42 of the BIR Act. Thereafter the respondent presented an application No. 583/84 before the Labour Court at Ahmedabad on 6-11-1984 under Sec. 79 of the BIR Act, wherein he claimed the relief for reinstatement in service. He also prayed to the Labour Court for payment of arrears of wages. The petitioner contended that respondent No.1 is not a workman of the company. He was engaged as a " Consultant " and he was not the employee of the company. The respondent being a consultant his nature of work was casual and there is no relationship of employer and employee between the petitioner and the respondent. The Labour Court after taking oral and documentary evidence of both the sides came to the finding that the respondent no.1 is 'not a workman or employee of the petitioner company' , and there is no relationship of employer & employee between the parties. Accordingly the application of respondent no.1 was dismissed by the Labour Court.

2. Having felt aggrieved by the order of the Labour Court, the respondent no.1 presented an appeal bearing No. 43/88 before the Industrial Court at Ahmedabad on 11-4-88. The Industrial Court by its judgment and order dated 9-2-1989 held that the respondent No.1 Dolatram Omkarmal should be reinstated in service in his original post of Consultant with backwages and also awarded cost of Rs.1000/- to respondent.

3. Having felt aggrieved by the decision of the Industrial Court at Ahmedabad dated 9-2-89, the petitioner Jindal Textile Mills Pvt. Ltd. filed the present writ petition for setting aside the order passed by the Industrial Court.

4. Mr. J.R. Nanavati, learned counsel appearing on behalf of the petitioner company argued that the Labour Court has correctly decided that the respondent no.1 is not a workman or employee of the company and there is no relationship of employer-employee between the parties. Learned counsel for the petitioner further submitted that the Labour Court has discussed in detail the oral evidence adduced by the parties and after considering the oral as well as documentary evidence came to the

conclusion that the respondent no.1 is not an employee of the company. It is further argued by Mr. Nanavati that the respondent no.1 has received his remuneration at the rate of Rs.2000/- per month for rendering consultancy services in the company. Learned counsel also submitted that the petitioner has signed the receipts showing that he received the remuneration as the consultant and not as a worker or employee of the company. It is also submitted by Mr. Nanavati that in the Pay Roll of the company the name of the respondent do not appear and no P.F. deductions were made by the company from the remuneration of the respondent. Consequently the learned counsel submitted that the Labour Court was correct in holding that the respondent is not an employee of the company in view of the fact that his name do not appear in pay roll of the company and there is no deduction of P.F. amount from the remuneration of the respondent. Mr. Nanavati further submitted that the Industrial Court committed an error in interfering with the finding of fact of the Labour Court. Mr. Nanavati also submitted that the Industrial Court reassessed the oral evidence adduced by the parties and has completely ignored the documentary evidence adduced by the company, and thereby came to a wrong conclusion that the respondent is an employee of the petitioner company and thereby the Industrial Court has committed an error in holding that the respondent is an employee of the company and the order of reinstatement of the respondent in the post of consultant is erroneous and illegal. Learned counsel consequently submitted that the Industrial Court has come to a wrong conclusion without considering the documentary evidence adduced in the case and therefore the order of the Industrial Court passed on 9-2-89 reinstating the petitioner is required to be quashed and set aside.

5. Mr. Mehul Shah, learned counsel representing the respondent submitted that the Industrial Court after assessing the evidence, both oral and documentary adduced in the case came to a definite finding that, the respondent is an employee of the petitioner company and has correctly passed an order for reinstatement. Mr. Shah further submitted that the finding of fact arrived at by the Industrial Court should not be interfered in a writ jurisdiction. It is also submitted that the finding of fact of the Industrial Court is conclusive and the Writ Court should not reappreciate the evidence and come to a different finding. It is also submitted by Mr. Shah that the employer in the instant case has adopted a policy of not incorporating the name of the respondent in the Pay Roll simply to deprive him from the benefit that may be available to him under the Industrial Act. It is

also submitted by Mr. Shah that the receipt has been prepared by the company and the respondent was asked to sign the same, and the respondent had no other option but to sign the receipt as consultant. It is submitted by Mr. Shah that the respondent has received his monthly wages as consultant and it was the duty of the company to indicate his name in the pay roll and to make deduction of P.F. contribution. Mr. Shah contended that oral evidence adduced in the case has made it abundantly clear that the respondent has worked every day in the company and his daily work include colour mixing, repairing of machines etc. It is also submitted that the respondent attended the factory from morning to evening everyday. Mr. Shah consequently submitted that the job of a consultant is not to attend the factory regularly but he has to render consultancy services as and when required by the company. The regular attendance in factory by the respondent and performing the job of colour mixing and repairing of machines along with other employees of the company clearly indicate that he is an employee of the company. It is submitted that only to deprive the respondent from the benefit of regular employee of the company, petitioner company intentionally omitted to include his name in the pay roll and not deducted his P.F. contribution from the salary. Mr. Shah further submitted that the oral evidence adduced by the parties and the admissions made by the witnesses of the company leads to one and only conclusion that the respondent is an employee of the petitioner company. Learned counsel consequently submitted that, the Industrial Court after discussing in detail the evidences adduced in the case came to a definite finding of fact that there is a relationship of employer employee between the parties and the respondent is an employee of the company. The Industrial Court has further held that the omission of including the name of the respondent in the pay roll is a device adopted by the petitioner company to deprive the respondent from the benefits as a regular employee of the company.

6. The powers of the writ court under Article 227 of the Constitution is very limited. Under writ jurisdiction it would not be proper to reappreciate the evidence on the question of fact. This Court is not exercising appellate jurisdiction over the Industrial Court. So far the finding of fact is concerned, it is required to be seen whether the Industrial Court has given a finding not based on any evidence or has committed any illegality in coming to its conclusion. The finding of fact should not be disturbed simply because another view can be taken. The standards and

nature of tests to be applied for finding out existence of master and servant relationship cannot be confined to a fixed formula. This will depend on each case or category of cases. In the present case the petitioner company have taken a stand that the name of the petitioner do not appear in the pay roll and therefore he cannot be treated as an employee of the company. It is also the stand of the company that the petitioner has received his monthly remuneration as a consultant. In order to safeguard the welfare of the workman it is necessary to examine whether the respondent in fact is a regular employee of the company or a consultant. It appears that the respondent has received his monthly remuneration at the rate of Rs.2000/- as a consultant. Therefore it is necessary to examine the finding of fact arrived at by the Industrial Court. After considering the oral evidence the Industrial Court has come to a definite finding that the respondent has worked in the company as a regular employee and he attended his work regularly like other employees of the company. It is further held by the Industrial Court that, the job of the respondent was colour mixing and repairing of machines and he performed his duties during office hours in every working day. Therefore, I am of the view that the Industrial Court had overwhelming material which constitute amble and sufficient basis for recording its finding. The Industrial Court had also given sufficient reasons for not relying on the receipts signed by the respondent. The Industrial Court has held that the receipts were obtained by the company with a view to achieve its objective of not extending the benefit of an employee to the respondent. The Industrial Court has not gone by only documentary evidence as has been done by the Labour Court. The Industrial Court has examined both the oral and documentary evidence adduced in the case and found out the actual relationship between the parties when claims and counter claims are made with regard to the relationship of master and servant. Such cases can only be decided after assessing the oral evidence adduced by the parties. This being a finding of fact the decision given by the Industrial Court on the basis of the materials before it, do not warrant any interference, mainly because the Industrial Court has given sufficient reasons for giving its findings. In many cases it has been seen that the employer devices or adopts various methods to get their needs fulfilled without rendering them liable under the Industrial Laws. In the instant case also the petitioner company adopted a device by not incorporating the name of the respondent in the pay roll and by obtaining receipts from him as a consultant. The receipts issued by the respondent shows that he has

received monthly remuneration . The job of a consultant is different from that of an employee of a company. If the respondent is really a consultant of the petitioner company then there was no need to give him monthly salary at the rate of Rs.2000/- per month. Neither the respondent should have worked in the factory of the company regularly during the entire office hours. The Industrial Court after assessing the oral evidence has come to a definite finding that the respondent has worked like other employes in the petitioner's company, and therefore I do not find any ground to interfere with this finding of fact by the Industrial Court. The factual finding recorded by the Industrial Court and the materials relied upon therefore do not call for any interference.

7. For the reasons stated above, I see no merit in the present petition and accordingly it is dismissed. Rule discharged. Interim stay granted earlier shall stand vacated. However I make no order as to costs.

Dt: 10-05-2000

(P.K. Sarkar, J)

/vgn.